CONFIDENTIAL

ASIAN-AFRICAN LEGAL
CONSULTATIVE COMMITTEE

REPORT OF THE
SUB-COMMITTEE ON THE LAW OF THE SEA
INTER-SESSIONAL MEETING
NEW DELHI
2 TO 6 FEBRUARY 1976

Prepared by:

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Chairman: H.E. Mr. W.W.K. Vanderpuye (Ghana).
H.E. Mr. Suffri Jusuf (Indonesia) on 5.2.1976.

Rapporteur: Mr. L.C. Vohrah (Malaysia).

REPORT

The Sub-Committee of the Whole on the Law of the Sea held an inter-sessional meeting at New Delhi from 2nd to 6th February 1976, to discuss various issues arising out of the three single negotiating texts prepared by the Chairmen of the three main Committees during the Geneva Session of the Third United Nations Conference on the Law of the Sea. Twenty one member Governments and twelve non-member Governments from the Asian-African region were represented at this meeting.

The Sub-Committee had before it the studies prepared by the Committee's Secretariat on the three single negotiating texts, a paper presented by the Bangladesh Government on the question of baselines and a paper presented by the Turkish Delegation containing Turkey's view on the provisions of the single negotiating text on subjects allocated to the Second Committee. The Sub-Committee had also before it the suggestions made by the Governments of Bangladesh, Japan, Republic of Korea, Sri Lanka, Tanzania, Thailand and Turkey regarding the topics to be discussed at the meeting.

It was clarified at the outset that the Sub-Committee's meeting was not intended to serve as a negotiating forum and the main purpose of the meeting was to consider how far the principles contained in the single negotiating texts served the interests of the Asian-African region and with this view to discuss the provisions of the single negotiating texts and issues arising therefrom in preparation for the New York Session of the Third United Nations Conference on the Law of the Sea. It was noted that various negotiating groups have been meeting since the Geneva Session of the Conference with a view to arriving at compromise solutions on some of the outstanding matters and a Working Group of the Group of 77 had recently concluded its deliberations on First Committee matters relating to exploration and exploitation of the sea-bed and the ocean floor.

STATUS OF THE SINGLE NEGOTIATING TEXTS

The first question which the Sub-Committee discussed was the status of the single negotiating texts. The participants recognized that the single negotiating texts were not the result of any conclusions reached in the three main Committees of the Third United Nations Conference and that they had been put forward by the Chairmen of the three Committees for purposes of negotiation, taking into account all formal and informal discussions and proposals. The provisions of the single negotiating texts were therefore not conclusive but at the same time it was desirable that countries should not revert back to their national positions which had been put forward previously. It was generally agreed that the single negotiating texts should be taken as

a basis for future discussions and negotiations and amendments to the same may be proposed which would reflect positions generally acceptable with a view to the conclusion of a Convention at an early date.

FIRST COMMITTEE

The participants at the outset generally discussed the provisions of the single negotiating text as a whole.

A view was expressed that the provisions concerning settlement of disputes and the tribunal as also the final provisions should be deleted from the single negotiating text as such provisions should appropriately be placed towards the end of the Convention as a whole and not separately in the said negotiating text. It was further stated that the title of the text was not appropriate and that there should be one title for the whole Convention which would cover the entire field. One of the participants explained that the reason why the single negotiating text relating to the First Committee contained a title, provisions concerning settlement of disputes and the final provisions was due to the fact that a separate Convention might become necessary in order to make possible early exploration and exploitation of the international sea-bed area where certain countries were anxious and ready to undertake such activities which needed to be controlled urgently and if necessary before the completion of the Convention on the Law of the Sea as a whole.

A view was expressed that Annex I to the single negotiating text, which provided for the basic conditions of general survey, exploration and exploitation was not appropriate and that

its essential provisions should form part of the Convention itself. It was also felt that terms like 'joint ventures' or 'service contracts' were out of place and that they should be substituted by expressions such as 'contractual arrangements'. There was some discussion about the meaning of the expression 'joint ventures' and it was pointed out that this term did not necessarily connote the same meaning as ordinarily understood.

Another view was expressed that the single negotiating text did not reflect sufficiently the position of some countries which considered the control by the authority envisaged in the text to be unduly onerous for States and enterprises which may engage in activities concerning exploration and exploitation. It was suggested that private enterprises should also have access to the international sea-bed area in conjunction with the international authority and that in some cases such enterprises should be permitted to undertake parallel operations. It was argued that the single negotiating text did not sufficiently protect the interests of countries providing the technology nor of the countries which were consumers and importers of the mineral resources and that too much emphasis was placed on the control of products, whilst no such control existed for exploitation of land-based resources.

The question of provisional application of the Convention as envisaged in Article 73 of the single negotiating text was discussed and it was pointed out that some States may find this difficult in view of their constitutional provisions. A view was expressed that the provisions regarding provisional application need not be considered at this stage as this matter would assume practical importance only

when a satisfactory solution has been found on the substantive provisions of the Convention. It was felt that if the provisions of the Convention as finally agreed upon were satisfactory, States could consult among themselves about the best manner to bring them into force at an early date, such as by agreeing to ratify the Convention within a stated period or by adoption of a suitable formula regarding provisional application which had been done in respect of some other multilateral Conventions in the past. It was however pointed out that it would be difficult to apply the Convention on a provisional basis unless the limits of national jurisdictions were settled and the extent of the international sea-bed area determined. It was further stated that the Convention on the Law of the Sea, unlike other agreements where provisional application has been resorted to, would be a law making Convention for the entire international community and in such cases the concept of provisional application might be inappropriate.

With regard to the provisions of the single text it was agreed that the main question which needed attention concerned the activities in the international sea-bed area, namely, who would explore and exploit and in this connection it was felt that the provisions of Articles 9, 22, 28, 30, 35 and Annex I needed to be considered. The representative of a landlocked country stated that the provisions of the single text did not reflect adequately the official views of the Governments of landlocked and geographically disadvantaged States nor did it take into consideration the legitimate aspirations of those States.

One question which was of concern to all the participants was what should be the basis of negotiations between the developing and developed countries regarding terms and conditions of exploitation and the Chairman stated that the developed nations were waiting to hear what proposals the Group of 77 had to make. In this connection it was pointed out that all the technical data regarding the resources of the sea-bed and the ocean floor being in the possession of some of the developed nations, the developing countries were at a great disadvantage in putting forward any concrete proposals.

In the course of discussions in the Sub-Committee comments were made on some of the provisions of the single negotiating text which are summarized below.

Article 1(iv)

One of the participants was of the view that the definition contained in Article 1(iv)(a) of mineral resources as including water has not been consistently maintained in all the provisions of the text and he therefore suggested the deletion of the term 'water' from the text. A redraft of the definition of mineral resources contained in sub-clauses (b), (c) and (d) of Article 1(iv) was suggested by another participant which in his view should read as follows:-

1(iv)(b)

"solid minerals in the ocean floor and subsoil thereof."

Articles 7 and 9

One of the participants pointed out that in these articles landlocked States have been treated on the same footing as Coastal States which was not

appropriate and that a distinction should be made between developed and developing landlocked States for the purpose of considering the question of the sharing of the resources of the sea-bed and the ocean floor. Two minor amendments were also suggested by another participant to Article 9, namely, in paragraph 1(b) of the Article the words 'avoid or' should be deleted and in regard to paragraph 2(c) it was suggested that the word 'products' should be deleted. The reason given for the second amendment was that whilst the authority would admittedly have control over the resources of the area, it was not clear as to how the authority would have control over the products made from the resources. The general principles contained in these two articles were found to be by and large acceptable to a majority of the participants.

Article 18

The representative of a landlocked country pointed out that in this article no clear modalities for participation of landlocked and geographically disadvantaged States have been provided for and that the article should spell out in clear terms how the special needs and interests of these countries should be safeguarded.

Article 22

The provisions of this article were discussed in considerable detail and several questions arose in the course of discussions. One participant felt that the provisions of this article were somewhat contradictory to provisions of Articles 4 and 10. A question which was discussed in some detail was who may exploit the area if the authority could not do so by itself as envisaged

in paragraph 1 of this article. It was recalled that the position of developing countries as well as the Socialist group of States was that in such a case there should be no direct bidding in which case the bid was likely to go to multilateral corporations which would then have practical monopoly over such activities. No concrete suggestion however emerged out of the discussions.

A further question which was raised was whether a State which participates in the activities of exploration and exploitation in the international sea-bed area is to be regarded as engaging in a commercial activity pure and simple and if so would it be entitled to sovereign immunity. It was recalled that on this aspect the general view as expressed at Caracas was that no sovereign immunity could be claimed in regard to these activities but this may not be acceptable to the Socialist States.

Another question on which some doubt was raised was in regard to the provisions of paragraph 3 of this article as to how the authority can identify the economically viable mining sites if it is itself technologically not capable of carrying out the activities of exploration and exploitation of the sea-bed resources. It was explained that even though the authority might not be in a position to carry out the actual work of exploration and exploitation it could on the basis of the advice of the Economic and Planning Commission and the Technical Commission, determine this question without much difficulty.

One participant suggested that private enterprise should have access to the area under the supervision of the authority and he felt that paragraphs 3 and 4 of the article were

unsatisfactory. In his view the provisions of paragraph 4 which contemplated that in addition to ten sites, which themselves were too many, the Authority could reserve a certain portion of mining sites for its own exploitation in the future was particularly unsatisfactory. He suggested an amendment to Article 22 which would read as follows:-

> "1. Activities in the Area shall be conducted in accordance with the basic conditions set forth in Annex I directly by the Authority through service contracts or joint ventures or any other such form of association which ensures its direct and effective control at all times over such activities.
>
> 2. Activities in the Area shall be conducted in accordance with basic conditions set forth in Annex I by States parties to this Convention, State enterprises and by persons natural or juridical which possess the nationality of such States and are effectively controlled and are sponsored by them."

Article 23

One participant pointed out that no criteria had been spelt out in this article as to how the needs and interests of developing countries and particularly those of the landlocked States should be protected.

Article 27

The representative of a landlocked country stated that the representation of landlocked and geographically disadvantaged States on the Council should be proportional to the actual number of such countries. With reference to paragraph 1 of this article it was suggested by another participant that the representation of special interests should be raised from twelve to eighteen.

A view was expressed that there should be a clear cut separation of powers between the Council and the Assembly and that the former should be the highest policy-decision making organ with no overlapping of powers with the Assembly. Alternatively it was suggested that the composition of the Assembly should be so altered as to provide for representation of special interest groups such as principal consumers, principal producers, principal industrialized States, as also landlocked and geographically disadvantaged States. It was however pointed out that the majority view at Caracas and at Geneva was to have an Authority with an Assembly composed of all the member States of the Authority on the basis of sovereign equality and meeting every two years, whilst the other organs were to be of an executive character functioning under the directions of the Assembly. It was further pointed out that the powers of the Assembly and the Council as enumerated in the single text were clear cut. The Assembly was the superior policy laying and policy formulating body, whilst the Council was a special body endowed with the special function of sea-bed exploration and exploitation. The Assembly, where each State has one vote, was comparable to the General Assembly of the United Nations and the Council like the Security Council had a primary responsibility in one particular field.

Article 50

A view was expressed that the members of the Economic and Planning Commission should not be selected on the basis of individual qualifications and expertise alone and that they should represent their Governments. A three chamber division was

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suggested consisting of representations of exporters, importers and producers, each of these chambers voting separately and the decisions of the Commission to be supported by a simple majority of each of these chambers plus a two third overall majority. It was stated that according to the single negotiating text too much emphasis has been placed on production control and that the provision should be amended so as to take into account the interests of consumer and importer countries. Furthermore it was suggested that the Economic and Planning Commission should not have the powers of recommendation to the Council and that it must restrict itself to functioning merely as a fact finding body by submitting reports.

The majority of the participants, were of the view that the scheme envisaged in the single negotiating text for the Economic and Planning Commission was by and large acceptable. However, it was felt that a matter which required consideration was why a technical organ like the Economic and Planning Commission should consult the parties and inter-governmental organizations while conducting investigations, since that would reduce its functions to that of an executive nature. Another view was that the functions of the Commission were of an investigative nature and therefore it should consult the parties as countries affected by the adverse economic effects may want to be heard. It was felt that the provisions of paragraph 4 of this article needed elaboration.

Article 31

It was felt that in this Article also an executive power was conferred on a technical body and that even if such a power was to be given it should be exercised in collaboration with the Council.

Article 32

Several participants expressed doubts concerning the advisability about the incorporation of the provisions concerning the Tribunal in the single negotiating text. One participant stated that whilst there were other established forums such as the International Court of Justice, there was no need for a special Tribunal as envisaged in the single negotiating text.

It was pointed out that Articles 32 to 34 had to be read in conjunction with Articles 57 to 63 and it was a matter for further consideration whether the power to question the decision of the Assembly and the Council should be given to the Tribunal. It was felt that the work of the Assembly and the Council should not be jeopardized by the constant threat of challenge before the Tribunal. However a view was expressed that if the Tribunal dealt with the matters before it in a speedy and expeditious manner, the Tribunal's jurisdiction may not prove to be an impediment in the work of the Assembly and the Council.

Article 36

It was suggested that the tenure for the office of the Secretary General should be provided for as has been done in respect of other offices in the single negotiating text.

Articles 40 to 41

A question was raised as to why the Secretariat should have a staff of inspectors and it was suggested that the functions envisaged for the inspectors should be given to the Technical Commission. According to one view, the functions of the Technical Commission were

purely of a consultative nature to be used by the Council and hence the Secretariat should have the staff of inspectors who would ensure strict and effective control of all activities in the sea-bed and ocean floor. Another view was that in any event the work of the inspectors should be linked with the Technical Commission and the Council.

ANNEX I

One view was that Annex I should not find a place in the Convention at all and its essential provisions should be incorporated in the body of the Convention. Certain criticisms were advanced regarding the provisions of the Annex and it was pointed out by one participant that the interests of importing countries had not been adequately safeguarded and further that the qualifications for applicants were merely focussed on the financial capacity, past performance, etc., and not so much on the possession of technical knowhow.

SECOND COMMITTEE

TERRITORIAL SEA AND THE CONTIGUOUS ZONE

One participant stated that the Coastal State should have a territorial sea of 200 miles as the concept of Exclusive Economic Zone was not sufficient to guarantee and secure the interests of some of the States. It was however pointed out by another participant that the extension of the territorial sea to 200 miles would affect the interests of other States, particularly States bordering enclosed and

semi-enclosed seas. It was urged that the special characteristics of the region in such areas should be taken into consideration in the matter of delimitation of the territorial sea. Most of the participants supported the provisions of the single text that the breadth of the territorial sea should be twelve miles, provided the concept of Exclusive Economic Zone was accepted. One participant stated that although the extent of his country's territorial sea was at present fixed at three miles, he would have no objection to its being extended to 12 miles as provided for in the single negotiating text by way of a package deal if satisfactory solutions were reached on other issues.

In regard to the question of the drawing of baselines (Article 6), the position of Bangladesh as indicated in their paper was noted and some participants expressed their understanding of the special problems of Bangladesh in this regard. A view was expressed that special problems encountered in regard to matters covered by the single negotiating texts should be taken into account and provided for in the Convention. The formulation set out in the Bangladesh paper in regard to the drawing of baselines was in the following terms:-

> "In localities where no stable low-water line exists along the coast due to continual process of alluvion and sedimentation and where the seas adjacent to the coast are so shallow as to be non-navigable by other than small boats and pertain to the character of inland waters, baselines shall be drawn linking appropriate points on the sea adjacent to the coast not exceeding 10 fathom line."

In regard to Article 13 it was suggested that a provision on the same lines as paragraph (7) of Article 6, should be incorporated in

Article 13, that is to say, the line of demarcation provided for under Article 13 should be incorporated in a chart to which due publicity must be given. It was suggested by one participant that the median line principle contained in Article 13 should be omitted and that the words 'continental or insular' ought to be added after the words 'where the coasts of two States .....' in Article 13 paragraph 1.

With regard to paragraph 2 of Article 16, one participant stated that the acts enumerated in this paragraph which are prejudicial to the peace, good order or security of the Coastal State were not exhaustive and he therefore suggested the addition of the words 'such as' at the end of the first sub-paragraph. He stated that the passage of nuclear-powered ships and ships transporting nuclear substances was by its very nature a prejudicial act and the same should be included as one of the items in paragraph 2 of Article 16. He further suggested that both under Article 20 and Article 29, prior notification and authorization should be necessary for the passage of such ships as well as warships. Another suggestion was that paragraph (2) of Article 16 needed to be re-drafted so as to state that the passage shall be considered not to be prejudicial unless it engages in any of the activities enumerated in this paragraph.

With regard to the provisions of Article 33 relating to the contiguous zone, it was pointed out that whilst the single negotiating text had provided for delimitation between adjacent and opposite States in the case of the territorial sea, the economic zone and the continental shelf, no such provision existed in regard to the contiguous zone. One of the participants explained that although a provision for

delimitation could well be added in the provision on contiguous zone, it was perhaps unnecessary as the contiguous zone would obviously form part of the Economic Zone and that the Coastal States merely enjoyed certain additional rights in the contiguous zone, such as those in relation to customs, fiscal, immigration or sanitary regulations.

STRAITS USED FOR INTERNATIONAL NAVIGATION

On this question it was felt that the expressions 'Strait State' and 'Straits used for international navigation' should be clearly defined.

The Sub-Committee did not find it possible to discuss the merits of the concept 'transit passage' used in the single negotiating text as the matter was still being studied by the Governments of the States concerned. However, one participant stated that he preferred the regime of innocent passage through straits used for international navigation. Another participant drew attention to the Algerian proposal put forward at Caracas (A/CONF.62/C.2/L.20) in regard to access to States bordering enclosed and semi-enclosed seas through straits used for international navigation. He stated that according to that proposal, tankers were to be accorded free passage through such straits.

EXCLUSIVE ECONOMIC ZONE AND CONTINENTAL SHELF

It was stated by one participant that the concept of Exclusive Economic Zone was not universally accepted and that the single negotiating text did not reflect the position of landlocked and geographically disadvantaged States.

It was maintained that the Economic Zone should not be exclusive to Coastal States and that landlocked and geographically disadvantaged States must have equal and non-discriminatory rights over the exploration and exploitation of living and non-living resources. Another participant stated that the concept of Economic Zone was originally related to the resources and consequently such matters as marine pollution and the laying of submarine cables and pipelines should not be the subject matter of the chapter on Exclusive Economic Zone. He stressed that in the Economic Zone the Coastal States should not have general jurisdiction and that they could only have resource jurisdiction. A further view was expressed that the concept of Exclusive Economic Zone and the Continental Shelf should be merged into one and that the rights of the Coastal State in the Continental Shelf should not extend beyond the limits of the Exclusive Economic Zone. It was stressed that reasonable arrangements should be made for the landlocked and other geographically disadvantaged States to have the same rights and obligations as regards the zone to be established by neighbouring Coastal States.

The majority of the participants favoured the retention of the jurisdiction and control of Coastal States over their Exclusive Economic Zone as given in Article 45 of the single negotiating text. Some of the participants favoured the retention of the concept of the Continental Shelf as distinct and separate from the concept of the Exclusive Economic Zone and supported the provisions of the single negotiating text which incorporated the natural prolongation theory upto the end of the continental margin where the same extended beyond the limits of the Exclusive Economic Zone. In this connection it was pointed out that the

Continental Shelf concept was already an established principle and several States have undertaken the work of exploration and exploitation on that basis. The majority considered that jurisdiction in respect of protection of the marine environment in the Exclusive Economic Zone should be given to the Coastal State, which would include pollution control and the provisions of the single negotiating text in this regard could be harmonized with the provisions of the single negotiating text prepared by the Third Committee. The majority was also not in favour of sharing the non-living resources of the Economic Zone or the resources of the Continental Shelf with landlocked or geographically disadvantaged States of the region.

During the course of the discussions, certain amendments were suggested to some of the provisions in part III of the single negotiating text which are set out below:-

Article 45:

1(a) The words 'sovereign right' to be used in place of 'exclusive right'.

1(b) 'sovereign' in place of 'exclusive'.

1(c) 'sovereign' jurisdiction in place of 'exclusive' jurisdiction.

1(d) add the words 'sovereign right' and delete the word 'jurisdiction'.

1(e) This should read as 'other rights and duties compatible with the provisions of this Convention'.

Article 49:

The word 'purely' occurring before 'scientific research' should be deleted.

A point was also raised in connection with Article 48(5) that the safety zone of 500 metres which corresponds to the 1958 Convention, may not suffice and requires further consideration and examination.

Article 51(2):

At the end of 51(2) add,

"provided that these arrangements do not create an unfavourable climate for its own fishing industries."

There was some discussion on Article 69 of the single negotiating text about the concept of revenue sharing. Some participants found the provisions of this article not acceptable, whilst some others were of the view that this provision would only be applicable in the event of the natural prolongation theory being accepted in regard to Continental Shelf. It was clarified that there was no question of revenue sharing so far as the resources of the Continental Shelf were concerned upto a limit of 200 miles and only in the event of the Continental Shelf extending beyond that limit that the provisions of this article be applicable. As regards the method and manner of such revenue sharing, one view was that the same should be regulated by the International Sea-bed Authority whilst another view was that the regional organizations could appropriately deal with such matters.

DELIMITATION OF MARINE SPACE IN GENERAL

The Sub-Committee generally discussed the question of delimitation of various marine zones such as the Territorial Sea, the Continental Shelf, the Exclusive Economic Zone, the Contiguous Zone, etc., and reference was made in this connection to Articles 13, 68 and 70. One participant stated that the median line principle contained in Article 68 and Article 70 was acceptable as an interim measure. Reference was made to the judgement of the International Court of Justice in the North Sea Continental Shelf case which dealt with the question of delimitation and

differing views were expressed as to whether that judgement dealt with the question of delimitation between adjacent States only or both with regard to adjacent States and States opposite to each other. It was suggested that in Article 13(1) the words 'in conformity with equitable principles' should be added.

LANDLOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES

The participants from landlocked States stated that the landlocked countries not only have the right of access to and from the sea but that these countries also have the right of transit through the territories of the Coastal States. It is a right and not a freedom. However they were prepared to have the modalities for the exercise of such right to be determined by agreement. The participants also suggested that an agency under the United Nations should be established to find a solution to the problem of landlocked countries and to guarantee their right of transit.

It was pointed out that the present Convention was dealing with the Law of the Sea and not directly with the question of transit rights of landlocked States and consequently so far as this Convention was concerned, the question of transit should be examined in that limited aspect. It was pointed out that Article 109 of the single negotiating text represented a compromise in that both the words 'right' and 'freedom' have been used. It was recalled that in the various International Conventions the absolute right of transit of landlocked States was not maintained and that the right of transit has been satisfactorily solved in most cases by means of bilateral agreements. One participant stated that the expression 'rights' should not be used in

Article 109 and in other articles and the same should be substituted by the word 'freedom', wherever it occurred in the single text. He stated that access to and from the sea cannot exist without agreement and the extent to which such access has to be permitted shall be determined by the Coastal State concerned. The second question on this topic related to the provisions of Article 116 in regard to the sharing in the resources of the Exclusive Economic Zone and it was suggested by participants from landlocked States that the words 'non-living resources' should also be included in that Article. A further suggestion was made that the words 'geographically disadvantaged States' should be added after the words 'landlocked States' in Article 116. The other view expressed in the meeting was that there was no question of sharing in the non-living resources and in this connection it was recalled that initially it was proposed to give the landlocked States the privilege of sharing in the living resources which was then made into a right during discussions in the Organization of African unity. The participants of the Coastal States did not appear to be in favour of extending that right any further. One participant emphasized that both living and non-living resources on or under the surface or sub-soil and within the water columns was under the sovereignty of the Coastal State and therefore sharing even in respect of living resources was a matter of privilege and not of right.

ARCHIPELAGOS

The Sub-Committee was not in a position to discuss the regime concerning Archipelagos as it was stated that the Archipelagic States have yet to meet to discuss the provisions of the single negotiating text among themselves. It was stated

by one of the participants from an Archipelagic State that they had already reached agreement with their immediately adjacent neighbouring States and they had to negotiate with maritime States and other States as regards passage through archipelagic waters. He suggested that in Article 117 the word 'only' should be added after the words 'shall apply' in paragraph 1. This was supported by another participant.

One of the participants suggested that Article 122 should be redrafted as follows:-

> "Without prejudice to the provisions of Articles 124 and 125, long standing interests of other countries in the use of the archipelagic waters, in particular, the traditional rights of the neighbouring countries, such as those concerning fisheries, and the laying and maintenance of submarine cables and pipelines shall be recognised by the Archipelagic States. The modalities for the implementation of this principle shall be regulated by bilateral agreements between the States concerned."

Attention was invited to the provisions of Article 131 and it was suggested by one of the participants that whatever regime is applicable to Archipelagic States should be applicable mutatis mutandis to oceanic archipelagos belonging to Continental States. He stated that there was no distinction in principle in so far as the application of the regime was concerned between archipelagos forming part of an Archipelagic State and archipelagos which belonged to Continental States. Certain practical difficulties were however pointed out in the application of this concept to archipelagos belonging to Continental States in semi-enclosed seas.

REGIME OF ISLANDS

One of the participants stated that no distinction should be made between islands on the basis of size, population, etc., in regard to applicability of the regime. He pointed out that many of the continental territories were sparsely populated and some parts were uninhabited such as desert areas, and as no distinction was sought to be made on these grounds, it was unfair to make any distinction in regard to islands on such basis. He also had some reservation to paragraph 3 in this article. Another participant suggested that paragraph 3 of Article 132 be deleted. The other view was that uninhabited islands, rocks, etc., should have no Economic Zone. Another participant suggested that the word 'medium' should be added before the words 'high tide' in paragraph 1 of Article 132 as it would accord with the national legislation of his country.

ENCLOSED AND SEMI-ENCLOSED SEAS

One participant had serious reservations as to whether a chapter on enclosed and semi-enclosed seas should be included in the comprehensive Convention on the Law of the Sea. According to him there was no special rule in international law which would justify a special regime in regard to such seas. The other view was that the special characteristics of enclosed and semi-enclosed seas as well as principles of justice and equity demanded the inclusion of special provisions which would be applicable to such areas and a separate chapter in the Convention ought to be incorporated for this purpose. Some of the participants however did not find the provisions of Articles 133 to 135 very

satisfactory and there was a general feeling that the terms 'enclosed' and 'semi-enclosed' seas needed a clear cut definition. A view was expressed that the regime concerning both enclosed and semi-enclosed seas should not be clubbed together and it was for consideration whether separate provisions were called for. It was generally agreed that the provisions of Articles 133 to 135 needed re-drafting.

THIRD COMMITTEE

The Sub-Committee noted that some of the matters contained in the single negotiating text have not been discussed in detail at formal or informal meetings during the Caracas or Geneva Sessions. In this connection it was pointed out that some of the provisions on marine scientific research and the whole of the chapter on development and transfer of technology were never discussed at all. It was therefore felt that the important issues on the single negotiating text needed serious consideration.

PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

One of the participants urged the need for harmonising the provisions of the single negotiating text prepared by the Chairman of the Second Committee with the Single negotiating text relating to the Third Committee. In his view the nature of the Coastal State jurisdiction within the Economic Zone in the matters of protection and preservation of the marine environment and scientific research was not clear in the Third Committee Text. It was pointed out that in the part relating to Exclusive Economic Zone in the

Second Committee Text, Coastal States have certain exclusive jurisdictions in respect of these matters (Article 45) but there was no reference to the Exclusive Economic Zone in the chapters relating to standards (Articles 16 to 21) and enforcement (Articles 22 to 40), except in regard to dumping in the single negotiating text of Committee III. It was stated that the chapters on standards and enforcement were the most crucial on protection and the preservation of the marine environment. It was pointed out that in Article 20, there was no reference to Economic Zone at all nor was there any mention of pollution caused by accidents at sea. It is also not specified whether the Coastal State has the right to prescribe regulations for the passage of vessels through the Economic Zone.

ENFORCEMENT

It was pointed out that in the single negotiating text there was no indication as to the quantum of enforcement measures or the nature of enforcement regulations, i.e., whether it would be through national regulations or international regulations. One participant felt that if national regulations were to be followed, there was the danger of multiplicity of regulations and another participant stressed the urgency for establishing enforcement measures.

JURISDICTION

It was pointed out that in the single negotiating text, the primary jurisdiction was conferred on the flag State. The Coastal State had no powers to stop, investigate and institute proceedings against a ship which was merely passing. The port State had jurisdiction only

in the case of voluntary entry of a ship into the Coastal State. If the marine environment was adversely affected by a passing ship, the only course open to the Coastal State was to report to the flag State to take action. According to one view these provisions were not adequate and required harmonisation with the provisions of Article 45. According to another view, pollution should be controlled and prohibited at the source itself and hence the flag State should have jurisdiction. However, even on this view, the flag State jurisdiction in the framework of the Single Negotiating Text of the Third Committee was not found to be adequate. A view was expressed that a Coastal State shall not have jurisdiction in regard to pollution control over its entire Economic Zone of 200 miles but there could be a pollution control zone of 50 nautical miles. In this area the Coastal State may have the power to stop, investigate and if necessary institute proceedings including criminal proceedings. According to this view international standards and regulations for pollution control needed to be established and that these international standards must be very stringent and effective. One participant did not favour national standards on construction and design especially in case of merchant ships for that might in effect amount to total prohibition of international trade and commerce.

MARINE SCIENTIFIC RESEARCH

A view was expressed that a distinction between research of a fundamental nature and research related to the resources of the economic zone was not appropriate whilst according to another view such a distinction did in fact exist. As an example, it was stated that commercial research was not a research of a fundamental

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nature. It was however pointed out that any research was bound to have some indirect commercial objective.

SETTLEMENT OF DISPUTES

It was pointed out that this topic had not been discussed either in the United Nations Sea-Bed Committee or at the Caracas and Geneva Sessions of the Conference on the Law of the Sea and that the provisions for dispute settlement in the single negotiating texts might have been based on a paper which was circulated by the President of the Conference which was yet to be studied.

One participant stated that there must be provisions in the Convention providing for procedures for compulsory settlement of disputes and that the Convention should not leave it to the parties to negotiate settlements in view of the fact that vital and complicated issues were involved in a Convention on the Law of the Sea. He was not in favour of the establishment of a Law of the Sea Tribunal when other judicial bodies and arbitration forums already existed but he considered that functional bodies with special powers to deal with such important matters as fisheries, pollution control, etc., as envisaged in the single negotiating texts might be established.

NOTE:

This Report has been finalised by the Chairman and the Rapporteur with the exception of Committee III matters which have been prepared by the Secretariat.

ANNEX-I

ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

LIST OF PARTICIPANTS IN THE MEETING OF THE SUB-COMMITTEE OF THE WHOLE ON THE LAW OF THE SEA AT NEW DELHI.

2ND TO 6TH FEBRUARY 1976

MEMBER GOVERNMENTS

BANGLADESH	: Mr. M. Kamaluddin
GHANA	: H.E. Mr.W.W.K.Vanderpuye
INDIA	: H.E. Dr. S.P.Jagota, Mr. Vinay Verma, Commodore F.L.Fraser, Mr. P.R. Rajgopal, Dr. P. Sreenivasa Rao, Mrs. R. Lakshmanan, Mr. I.C. Jain, Mr. Bhimsen Rao.
INDONESIA	: H.E. Mr. Suffri Jusuf, Mr. Adi Sumardiman, Mr. Indra M. Damanik, Mr. Remy Siahaan, Mr. Achmad Mugalih,
IRAN	: Mr. Hadi Sadeghi, Mr. H. Shah Panahi,

IRAQ	: H.E. Dr.Ismail Abdul Hameed Merza.
	Dr. Akram Al-Witri,
	Dr. Mahmoud Al-Hamed
	Dr. Mohammed Alhaj Hamoud
JAPAN	: Mr. Tokeo Iguchi,
	Mr. A. Sugino
REPUBLIC OF KOREA	: Mr. Won Ho Lee,
	Mr. Yoon Kyung Oh.
KUWAIT	: Mr. Ali Al-Sanaak,
	Mr. Hamad A.Al-Ahmad,
	Mr. Asad Abdulkader Al-Ibrahim,
MAURITIUS	: Mr. Anil Kumar Gayan
MALAYSIA	: Hon'ble Tan Sri Mohd.Salleh bin Abas,
	Mr. L.C. Vohrah,
	Mr. Zakaria bin Mohd. Yatim.
NEPAL	: H.E. Mr. C.B.B. Malla,
	Mr. G.M. Pradhan,
	Mr.J.P. Rana.
NIGERIA	: Mr. M.O. Adio,
PAKISTAN	: Mr. Raza A. Khan
PHILIPPINES	: Mr. Rosendo Villamayor

SRI LANKA	: Mr. P.H.Kurukulasuriya
TANZANIA	: Mr. S.A. Mbenna
THAILAND	: H.E. Dr. Arun Panupong
TURKEY	: H.E. Mr. Samik Yolga, Mr. Selim Kuneralp,
YEMEN	: H.E. Mr. Zaher El-Kindy, Mr. Mahmoud Suleman Mohammed,

ASSOCIATE MEMBER:

SAUDI ARABIA	: Mr. Sulaiman Mohamed Al-Nasser,

NON MEMBER GOVERNMENTS

AFGHANISTAN	: Mr. Hafizullah Anwar
BHUTAN	: Mr. Angkoo Tshering
BURMA	: U Soe Myint
CYPRUS	: H.E. Mr. A.J. Jacovides
ETHIOPIA	: Mr. Eyob Tadesse
LAOS	: Mr. Thongdam Simmalavong
MONGOLIA	: Mr. Shagdarsurenguin Ihashid

MOROCCO	: Mr. Mustapha Abdelhak
SENEGAL	: Mr. Cherif Younouss Diaite
SOMALI DEMOCRATIC REPUBLIC	: Hon'ble Mr. Yusuf Muni Robleh, Mr. Abdul Qhwi Ahmed Yusuf
UNITED ARAB EMIRATES	: Mr. Ahmed Husain Al-Mehrie
ZAIRE REPUBLIC	: H.E. Mr. Tleka Mboyo, Mr. M. Bale Mwana Mupoy,